Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-104

JAMES JOHNSON, ET AL.,

Appellants,

v.

ATTORNEY GENERAL OF MARYLAND, ET AL.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION OF APPELLEES TO DISMISS APPEAL

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The Attorney General of Maryland, the Johns Hopkins Hospital, the Medical and Chirurgical Faculty of Maryland, and the Medical Mutual Liability Insurance Society of Maryland, Appellees in the above captioned case, sought to be appealed to this Court, move pursuant to Rule 16(1)(b) of the Rules of the Supreme Court of the United States to dismiss the appeal on the ground that most of the federal questions sought to be reviewed were not passed upon them by the Court of Appeals of Maryland, and on the further ground that no substantial federal question is presented by the appeal.

I.

APPELLANTS' CONTENTIONS THAT THE HEALTH CARE MALPRACTICE CLAIMS ACT, TITLE 3, SUBTITLE 2A, COURT AND JUDICIAL PROCEEDINGS ARTICLE, MARYLAND CODE, DENIES DUE PROCESS TO CLAIMAINTS UNDER THE ACT BECAUSE THE HEALTH CARE PROVIDER MEMBER OF EACH ARBITRATION PANEL HAS A PECUNIARY INTEREST IN THE OUTCOME OF THE ARBITRATION; AND THAT THE ACT FAILS TO DIRECT WHAT RULES AN ARBITRATION PANEL IS TO USE IN DETERMINING LIABILITY AND DAMAGES; AND THAT "A MAJORITY OF THE PANEL HAS NO LEGAL TRAINING OR EXPOSURE TO THE INTRICACIES OF TORT LAW" WERE NOT EXPRESSLY PASSED UPON BY THE MARYLAND CODE OF APPEALS.

Rule 16(1)(b) reads in pertinent part, as follows:

> The Court will receive a Motion to Dismiss an Appeal from a State Court on the ground . . . that the federal question sought to be reviewed was not timely or properly raised, or expressly passed on. . . .

As pointed out in *Street v. New York,* 394 U.S. 576, 582 (1969):

> This Court has stated that when as here, a highest state court has failed to pass upon the federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.

The specific issues described above were not expressly passed upon by the Court of Appeals in its opinion in this case, and Appellees believe that if these issues were addressed at all in the Appellants' Brief, they were addressed in the context of State Constitutional Issues rather than in the context of *Federal* Due Process.

II.

NO SUBSTANTIAL FEDERAL QUESTION EXISTS AS TO WHETHER THE HEALTH CARE MALPRACTICE CLAIMS ACT DENIES DUE PROCESS TO CLAIMANTS UNDER THE ACT.

Initially, Appellants direct this Court's attention to several general principles of constitutional law. First, it is a cardinal principle of law that legislation is presumed to be constitutional, and proof of unconstitutionality of the legislation must be clear and convincing. *See, e.g. Powell v. Pennsylvania,* 127 U.S. 678 (1888); *Cf. Carolene Products Company v. United States,* 323 U.S. 18 (1944), nor will the Courts question the wisdom or expediency of legislation, in determining whether or not it is constitutional. *See, e.g., Williamson v. Lee Optical of Oklahoma, Inc.,* 348 U.S. 483 (1955); *Nebbia v. New York,* 291 U.S. 502 (1934). Finally, and especially important, as pointed out by the Court of Appeals in the present case, *quoting from Munn v. Illinois,* 94 U.S. (4 Otto.) 113, 134 (1877):

> A person has no property, no vested interest, in any rule of the common law . . . Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations.

More recently, this Court has stated that:

> The Constitution does not forbid the creation of new rights or the abolition of old ones recognized by the common law, to attain a permissible legislative object.

Silver v. Silver, 280 U.S. 117, 122 (1929). Thus, appellants' contentions that the Health Care Malpractice Claims Act are in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution are faced at the outset with the heavy burden of showing that convincing evidence of unconstitutionality was established in the

trial court and presented to the Court of Appeals in this case.

Appellants assert that under the Act, a medical malpractice claimants is denied a meaningful opportunity to be heard at the panel because "his rights are adjudicated by a biased decision maker" — the health care provider member of each panel. This is so, claim the appellants, because "[e]very health care provider who serves on the panel will have a pecuniary interest in the outcome of the arbitration in that a large damage award will adversely affect the malpractice insurance premiums of that arbitrator." (Jurisdictional statement of Appellant at 7). These conclusions are purely speculative, inasmuch as the appellants failed altogether to establish either by testimony or by reference to any authoritative publication, that it would be of any significant pecuniary benefit to Maryland's medical community or to its malpractice insurers to unilaterally deny meritious malpractice claims at the panel level. To the contrary, appellees suggested, and will attempt to demonstrate, that it is in the better interest of both physicians and insurers that the panels' decisions be arrived at in a scrupulously fair manner.

Initially, appellees submit that in order to disqualify a decision maker on the ground of bias, one must show a direct and substantial pecuniary interest on the part of the decision maker in the outcome of the matter at issue before him. In *Gibson v. Berryhill,* 411 U.S. 564 (1973), the Court upheld a three-judge district court's finding that such pecuniary interests existed on the part of the Alabama Board of Optometry in a delicensing procedure before the Board in which the Board members stood to lose about one half of their competition if they chose to revoke the defendant optometrists' licenses. In that case it was unequivocally in the best pecuniary interest of the Board members to revoke, because the competitors' business would revert directly

to them. By contrast, in the recent case of *State, use of Strykowski v. Wilkie,* 261 N.W.2d 434 (Wis. 1978), involving a system for compulsory arbitration of malpractice claims essentially identical to that involved in the instant case, the Wisconsin Supreme Court rejected a contention that the panel members who were health care providers would be "financially interested" because they, along with all other health care providers in the State, pay annual assessments to maintain the patients' compensation fund. The Wisconsin Court noted that:

> [a]ny financial interest inherent in the structure of [the Wisconsin Act] is too remote and speculative to require disqualification. Absent evidence to the contrary, adjucators must be presumed to be persons of honesty and integrity. *See*: *Withrow v. Larkin,* 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

261 N.W.2d at 445-46. The Court proceeded to point out, additionally that the purpose of having medically trained panel members was to provide special expertise for deciding highly technical medical issues, and hence, "[d]isqualification of medical members would emasculate the panel review process." *Id.*

Of course, as pointed out above, the appellants were able to develop no evidence that it would be in the pecuniary interests of physicians and malpractice insurers to deny meritious claims in the arbitration panel level. This proposition is not self-evident, and it is certainly not a matter for judicial notice. To the contrary, it can perhaps be more persuasively argued from the evidence produced at trial that the system embodied in the Act will successfully reduce the costs of medical malpractice insurance only if the arbitration panels decide cases fairly and even handedly so that neither claimants nor health care providers are consistently dissatisfied with the decisions at the arbitration level.

This analysis is supported by two considerations, both of which were before the trial court in the instant case, and both of which were presented to the Court of Appeals. First, it is an established fact that a major element of medical malpractice insurance expenses is the cost of defense. The Report of Maryland's Medical Malpractice Insurance Study Committee, presented to the Maryland General Assembly, entered into evidence at trial in this case, and referred to by the Court of Appeals in its Opinion (Appx. to Jurisdictional Statement at 6 a), indicates that approximately 50% of the reserves set aside for claims by the former leading medical malpractice insurer in Maryland was attributable to legal fees likely to be incurred in defending the claims. This estimate was not challenged at trial or on appeal. Second, the trial court found as fact:

> The arbitration procedure mandated by the Act will substantially increase the claimant's cost of arbitration if either party desires to have the case tried thereafter in Court. On the other hand, the arbitration procedure will reduce the claimant's cost of litigation if all parties accept the arbitration award."

(Appx. to Jurisdictional Statement at 49a). Patently, it would seem to be equally true that the cost of defending an arbitration procedure will be less if the procedure is not subsequently taken to judicial trial.

Logically, then, the cost of malpractice insurance will be lower in the long run if both claimants and health care providers are maximally satisfied with the decisions of the arbitrators. Otherwise, the dissatisfied parties will be inclined to seek judicial review, especially in cases where substantial damages are involved. If, as appellants suggest, the panel members who are health care providers are truly motivated by a desire to keep insurance costs down, this goal can likely be achieved best by deciding the cases as fairly as possible.

Of course, the purpose of the foregoing analysis is not to reargue the comparative merits of arbitration and traditional common law judicial procedure. The system embodied in the Act is as yet essentially untried, and speculation about its future effectiveness is not germane to its constitutionality in any event. Rather, this analysis demonstrates that members of the panel who are health care providers do not inevitably have a direct and substantial pecuniary interest in denying meritious malpractice claims, and thus, there is no apparent factual basis to appellants' assertions that the Act violates due process by providing for a bias decision maker.

Appellants also argue that the Act:

> Furthers the opportunity for arbitrariness by failing to provide any affect *voir dire*. The act only provides in Section 3-2A04(c) that each party may strike any two names from the list of possible panel members provided by the Director. The parties have no opportunity to examine the panel candidates as to their interests in the determination of liability and damage.

(Jurisdictional Statement at 7).

The Appellants misread the Act when they state that each party may strike only two panel members. Section 3-2A04(c) allows the parties 30 days in which to object for cause to the inclusion of any arbitrator on the list. *In addition,* each party may then strike two names from the list, regardless of cause. The parties are provided with biographical statements as to each prospective panel member along with the list of prospective panel members (Section 3-2A04(b)). The Act does not prevent a party or his counsel from further investigating the background or *curriculum vitae* of a prospective panelist during the 30 day period set forth in Section 3-2A04(c). Indeed, the appellants cite no authority to support the proposition that due process requires any *voir dire* of prospective panelists.

Finally, in this regard, as pointed out by the Court of Appeals (Appx. to Jurisdictional Statement at 24a), Section 3-2A06(c) of the Act provides that "a party may have the award vacated by a trial court on the ground, among others, of evident partiality by an arbitrator," in which event, the matter is taken to trial as if there had been no award. Taken as a whole the procedural safeguards in the Act against bias on the part of panel members are substantial, and more than adequate to satisfy due process.

Appellants next suggest that the Act violates due process because it purportedly sets no standards for determination of liability and assessment of damages, and it purportedly contains no rules of evidence. Appellees do not believe that this issue is properly before this Court at the present time, but assuming for the sake of argument, that it is, no substantial federal question exists in this respect because a careful reading of the Act discloses that it contains or incorporates by reference reasonably precise standards to guide the arbitrators in the resolution of malpractice claims.

(a) *Rules of Evidence*

Section 3-2A05(b) of the Act incorporates by reference into the Act *inter alia* Section 3-214(b), Courts and Judicial Proceedings Article, Maryland Code which states that: "[a]rbitrators are not bound by the technical rules of evidence". The Revisors' note to Section 3-214 indicates that the evidentiary provisions of Maryland's Administrative Procedure Act, Article 41, Section 252, Maryland Code "having been equated" with this phrase. Section 252 of Maryland APA contains detailed guidelines for resolution of evidentiary issues by administrative tribunals, and appellants submit that this Section of the APA aply satisfies the requirement of due process in this respect.

(b) *Rules of Substantive Law*

Section 3-2A09 of the Act reads:

> The provisions of this Subtitle shall be deemed procedural in nature and shall not be construed to create, enlarge, or diminish any cause of action not heretofore existing, except the defense of failure to comply with the procedures required under this Subtitle.

The clear implication of this Section is that the rules of substantive law traditionally applicable to common law medical malpractice cases must be applied without change by the arbitration panels under the Act. The panel should experience little difficulty in determining and interpreting the applicable rules of substantive law because each panel will contain one attorney member who, pursuant to Section 3-2A05(c), shall be designated as chairman with the responsibility of deciding all prehearing procedures and discovery issues. There is absolutely no basis for assuming that different panels will not consistently apply the same rules of procedural and substantive law as suggested by the appellants.

Appellants argue further that "the procedure provided by the Act is arbitrary in a third way: it is unreasonable to presume at the trial level that the panel's finding is correct," referring to Section 3-2A06(d) of the Act, which provides that if a party rejects the award of the panel and demands a trial *de novo,* the award of the panel will be admissible into evidence at trial and presumed to be correct.

Appellants attacked this provision of the Act both at trial and in the Court of Appeals solely on the theory that it effectuated an infringement upon the right of trial by jury in violation of Article XV, Section 6 of the *Maryland* Constitution. Having failed in this contention in the Court of Appeals, they now assert for the first time that this provision denies Fourteenth Amendment Due Process. Insofar as this contention is raised

for the first time on this appeal, it is not properly before this Court, but even if it were, the contention itself is without merit.

Contrary to appellants' attempt to distinguish the "presumptions of correctness" in the Act and in Maryland's Workman's Compensation Law, the respective provisions are essentially identical. Section 3-2A06(d) of the Act reads in pertinent part as follows:

> Unless vacated by the Court pursuant to Subsection (c), the arbitration award is admissible as evidence in the judicial proceeding. The award shall be presumed to be correct, and the burden is on the party rejecting it to prove that it is not correct.

By comparison, Maryland's Workman Compensation Law, Article 101, Section 56(c) provides, in pertinent part:

> In all court proceedings under or pursuant to this Article, the decision of the Commission shall be prima facie correct and the burden of proof shall be on the party attacking the same.

Long ago, the Maryland Court of Appeals interpreted this portion of the Workman's Compensation Law in the following manner:

> [The rule] simply puts the burden of proof upon the party taking the appeal, whether he be plaintiff or defendant. In other words, it establishes no new rule when the plaintiff happens to be the party appealing, as the burden was always upon the plaintiff to prove his case. But it shifts the burden from the plaintiff to the defendant, where the defendant losses before the Commission and desires to appeal from its decision, requiring the defendant in such a case to satisfy the jury by a preponderance of testimony that the plaintiff is not entitled to the award made by the Commission.

Stewart & Company v. Howell, 136 Md. 423, 434, 110 A. 899, 902 (1920). For essentially the same reasons, this

Court upheld a similar clause contained in the Act to Regulate Commerce of February 4, 1887, which provided that the findings and order of the Interstate Commerce Commission should be "Prima Facie evidence of the facts stated therein" in a subsequent civil suit before a jury to enforce payment of a Commission order, in *Meeker v. Lehigh Valley Railroad Company,* 236 U.S. 412 (1915), against a claim that this provision infringed upon the Seventh Amendment right to trial by jury and operated as a denial of due process. In *Meeker,* it was explained that:

> The provision only establishes a rebuttable presumption. It cuts off no defense, and interposes no obstacle to a full contestation of all issues, and takes no question of fact from either court or jury. At most, therefore, it is merely a rule of evidence. It does not abridge the right of trial by jury or take away of its incidents. Nor does it in any wise work a denial of due process law. In principle it is not unlike the statutes in many of the states, whereby tax deeds are made prima facie evidence of the regularity of all of the proceedings upon which their validity depends. Such statutes have been generally sustained . . . as have many other state and federal enactments establishing other rebuttable presumptions. . . .

230 U.S. at 430. And in *Hawkins v. Bleakly,* 243 U.S. 210 (1917), a similar provision in Iowa's Workmen's Compensation Law was sustained against a contention that it was contrary to the provisions of the Fourteenth Amendment, this Court holding that:

> A provision of this character, not unreasonable in itself and not conclusive of the rights of the party, does not constitute a denial of due process of law.

243 U.S. at 214. Seizing upon this statement in *Hawkins,* appellants charge that the presumption contained in the Act is "unreasonable," yet they produce no persuasive argument as to why this is so. It

is claimed that there is no standards to guide the panels' decision, yet it is clear from the statute that such standards are present, as explained above. It is further argued that the presumption is unreasonable because two of the panel members are not trained in the law, yet it is the blending of legal and medical expertise in the panels' compensation which is the central feature of the Act, and which, it is hoped, will make the panels eminently suitable to decide medical malpractice controversies. It is precisely this blending of expertise, in fact, which renders the "presumption of correctness" reasonable. Parenthetically, appellees point out that few, if any, jurors possess "legal training or exposure to the intricacies of tort law."

Finally, appellants claim that "prohibitive cost of trying a malpractice claim twice" works a "denial of any meaningful opportunity to be heard in violation of the Due Process Clause." The short answer to this argument is that claimants are not forced to "try their claims twice" under the Act, and no evidence adduced at trial establishes that the panel hearings would be inadequate or unfair. As noted by the Court of Appeals:

> When we recall that there is no vested interest in any rule of the common law, *Munn v. Illinois,* 94 U.S. (4 Otto.) 113, 134, 24 L. Ed. 77 (1887), so that the common law "may be abrogated or changed as the General Assembly may think most inducive to the general welfare" The *State v. Buchanan et al,* 5 H.&J. 317, 366 ([MD] 1821) (concurring opinion), it becomes apparent that there is here no denial of the due process right of access to the Courts by the addition of a mode of procedure which merely causes some delay and increases the expense for a litigant who takes his claim to Court, since there is no deprivation of any vested property right.

(Appx. to Jurisdictional Statement at 26a, 27a). As recently pointed out in *State, use of Strykowski v. Wilkie, supra.,* at 444:

> It has been held, however, that a party is not deprived of due process merely because it must seek administrative resolution of its claims before it has access to the courts. *West Penn Power Company v. Train,* (3d Cir. 1975), 522 F.2d 302, 313. This conclusion is equally applicable to the panel review process.

Accord, e.g., Carter v. Sparkman, 335 So. 2d 802 (Fla. 1976) *cert. denied,* ___ U.S. ___, 97 S. Ct. 740 (1977); *Application of Smith,* 381 Pa. 223, 112 A.2d 625 (1955), *App. dism. sub nom. Smith v. Wissler,* 350 U.S. 858 (1955).

In fact, the substance of appellants' contention seems to be that any restriction upon or preconditioned to the right to trial by jury is also a denial of due process. This argument was emphatically rejected recently in *Melancon v. McKeithen,* 345 F. Supp. 1025, (E. D. La. 1972) (three judge court), *aff'd* 409 U.S. 943 (1973). In *Melancon,* the Court upheld a Louisiana statute allowing state appellate courts to reexamine jury findings of fact in civil cases, on the broad ground that the Seventh Amendment right to trial by jury in civil cases was not so fundamental to the American system of justice as to be required by Fourteenth Amendment due process. The Court concluded:

> Principles of a viable American Federalism would seem to allow the states to work out their own civil procedures when those procedures do not conflict with the preservation of ordered liberty. In addition to substantive rights, procedural rights for which no substitute is available are within the due process concept. "But trial by jury (particularly in its rigid common law sense) and grand jury indictment, for which the 'information' has proven a desirable substitute, should be classified as what they are — technical procedures in a state of arrested development, whose evolution must be allowed to continue if it is ever to catch up with the needs of modern society and aspire to serve the needs of modern man."

Id. at 1048. *Cf. Capital Traction Co. v. Hof,* 174 U.S. 1, 18-30 (1898).

Appellants totally ignore the point that the Act is designed to provide claimants and health care providers alike with a full and comprehensive hearing procedure, at less expense and accompanied by less delay than the parties would normally experience in a jury trial. As explained by the trial court (Appx. to Jurisdictional Statement at 49a), the present high cost of litigating medical malpractice claims "virtually precludes" the institution of claims in which the potential recovery is less than $15,000. Indeed, for litigants with small claims of this type, the Act provides for the first time an effective forum for resolution of their claims.

As recognized by both the trial court and the Court of Appeals there simply exists no substantial federal question respecting the constitutionality of the Act under the due process clause of the Fourteenth Amendment. The procedures embodied in the Act were created to provide the claimants and health care providers with a fair, inexpensive, and expert tribunal for the resolution of these particularly complicated and difficult claims, preserving the free right of judicial review to any party who might be aggrieved by a panel's award. Appellants have failed altogether to point out a single aspect of the procedure that is inconsistent with the demands of due process.

III.

NO SUBSTANTIAL FEDERAL QUESTION EXISTS AS TO WHETHER THE PROVISIONS OF MARYLAND'S HEALTH CARE MALPRACTICE CLAIMS ACT DENY MEDICAL MALPRACTICE CLAIMANTS THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Appellants contend that the provisions of the Act deny equal protection to medical malpractice claimants

as a class because those provisions have "no fair and substantial relation to any legitimate legislative objective" (Jurisdictional Statement at 13). To reach this conclusion they speculate that arbitration will not be less expensive or less time consuming than traditional judicial procedure. They next speculate that the arbitration system will "deter[] malpractice and limit awards" (Jurisdictional Statement at 14), and they ask rhetorically whether this is an effective way to improve health care in Maryland.

As to whether or not arbitration by itself will be less expensive than judicial procedure, the trial court found as fact that arbitration alone would be both less expensive (Appx. to Jurisdictional Statement at 49a) and less time consuming (Appx. to Jurisdictional Statement at 50a) then traditional procedure in the Courts. This issue is no longer open to appeal.

As to whether the procedure embodied in the Act has "a fair and substantial relation to any legitimate legislative objective," one need only articulate the legislative objective to see that the Act is rationally designed to bring it about. The trial court found as fact that Maryland's predominent malpractice insurer, the St. Paul & Fire Marine Insurance Company, announced in May 1974 its intention to cease writing medical malpractice insurance in the State, and efforts to induce another carrier to enter the market in St. Paul's place proved futile (Appx. to Jurisdictional Statement at 51a). In 1975, the Maryland General Assembly created the Medical Mutual Liability Insurance Society of Maryland to fill this void, and some medical malpractice coverage has been provided since St. Paul's departure by "surplus line" carriers, the Mutual Fire Marine & Inland Insurance Company and the Glacier Generai Insurance Company (Appx. to Jurisdictional Statement 51a-52a). However, the trial court found as fact that:

> The medical malpractice insurance market, prior to the creation of Med Mutual, was very "tight"; and . . . even though Med Mutual has made liability insurance available to Maryland physicians, the absence of any other "admitted" carrier in the State signifies the continued precariousness of this particular type of insurance market.

(Appx. to Jurisdictional Statement at 52a). In short, the trial court found, and the Court of Appeals agreed, that a severe medical malpractice insurance crisis existed in Maryland after the departure of St. Paul and this crisis continued to exist up to the time that the Act was enacted. The Court of Appeals explained (Appx. to Jurisdictional Statement at 37a) the substantial relationship between the provisions of the Act and its purpose "—to reduce the cost of medical malpractice claims, thus reducing the cost of liability insurance and stabilizing the market" — as follows:

> [The trial] judge explained since the evidence established that an arbitration procedure could reasonably be expected to result in the resolution of such claims more rapidly and less expensively than by the usual mode of litigation — the statute being designed to encourage arbitration as the final resolution of the claim — the Act bears a fair and substantial relation to its purpose and is thus not in contravention of the Fourteenth Amendment or [the Maryland] Declaration of Rights.

Appellees see nothing in Appellants' Jurisdictional Statement that seriously challenges the reasoning of either the trial court or the Court of Appeals in this respect. Bearing in mind that the Act represents an attempt by the Maryland General Assembly to resolve a problem of recent origin in a relatively new and untested manner, and, at least in Maryland, "Courts are under a special duty to respect the legislative judgment where the legislature is attempting to solve a serious problem in a manner which has not had an opportunity to prove its worth," *Attorney General v. Johnson,* (Appx. to Jurisdictional Statement at 43a); *Bowie Inn v. City of Bowie,* 274 Md. 230, 237, 335 A.2d 679, 684 (1975). This Court should be loath to pay heed to the speculative assertions of the appellants to the effect that the Act will diminish the quality of health care in Maryland. Neither the trial court or the Court of Appeals found these assertions to be of any substance, constitutionally.

Insofar as the provisions of the Act bear a fair and substantial relation to the proper legislative purpose of stabilizing the medical malpractice insurance market in Maryland, there is no substantial federal question as to whether the Act denies the appellants or members of their class the equal protection of the laws.

Respectfully submitted,

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I HEREBY CERTIFY that on this 18th day of August, 1978 copies of the foregoing Motion of Appellees to Dismiss Appeal were mailed to Marvin Ellin, Esquire, Suite 201, 1101 St. Paul Street, Baltimore, Maryland 21201, attorney for Appellants, James and Sheila Johnson.